

Notice of Allowability

Application No.

09/374,117

Examiner

Hai Vo

Applicant(s)

FORTE, NICHOLAS F.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the filing of 01/21/2005.
2. ☒ The allowed claim(s) is/are 26-29 and 32.
3. ☒ The drawings filed on 12 June 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Terminal Disclaimer

1. The terminal disclaimer filed on 01/21/2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent 6,114,024 has been reviewed and is accepted. The terminal disclaimer has been recorded.

REASONS FOR ALLOWANCE

2. The following is an examiner's statement of reasons for allowance: Note that Applicant's amendment is sufficient to overcome the 112 claim rejections as pointed out by the Board of Patent Appeals and Interferences in its decision on Appeal No. 2004-2210 mailed September 30, 2004. Applicant's amendment is sufficient to overcome the art rejections over McCormack et al (US 6,075,179). The inclusion that the C layer is free of particulate filler renders the instant claims unobvious over the prior art. The obviousness-type double patenting rejections over US Patent 6,114,024 have been overcome by the terminal disclaimer. No obviousness-type double patenting rejections over US Patent 5,914,184 is made for the following reasons. The filled film layer of the US Patent 5,914,184 contains a filler in an amount of at least about 10% by volume, which is not sure to be equivalent to the amount of 30% to 80% by weight as disclosed in the claimed invention. It appears that the porosity is dictated by the amount of the filler and particle size of the filler and since the US Patent 5,914,184 does not positively teach the amount of the filler within the claimed range, the missing porosity is not necessarily present in the reference. Further, the continuous film layer of the US Patent 5,914,184 comprises

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an elongatable resin (claims 1 and 5). There is no motivation to add a hydrophilic polymeric resin which is capable of providing a barrier to water and microorganisms in the continuous film layer because the continuous film layer of the US Patent 5,914,184 itself is a barrier to water and microorganisms (US Patent 5,914,184, column 3, lines 53-56).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (571) 272-1485. The examiner can normally be reached on M,T,Th, F, 7:00-4:30 and on alternating Wednesdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HV

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